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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/382,374
Filing Date: August 24, 1999
Appellant(s): PHILYAW ET AL.

MAILED

OCT 18 2007

GROUP 3600

Gregory M. Howison
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/3/2007 appealing from the Office action mailed 7/3/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal: Please see page 1-3 of the Appellant's Appeal Brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Tognazzini	5,708,478	1-1998
Picco	6,029,045	2-2000
Harvey	5,887,243	3-1999
McKiel	5,133,011	7-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1, 5, 7, 9-11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tognazzini (5,708,478) in view of Picco (6,029,045) in view of Harvey (5,887,243).

Claim 1, 10: Tognazzini discloses a method, system for launching an advertisement on a computer, comprising:

a computer having an audio input interface and a display (Fig. 3; col 7, lines 50-60),
an audio output acoustically coupled from a receiver of a broadcast source to said audio input interface for providing an audio signal having encoded therein advertisement information (col 7, lines 50-60; col 3, lines 35-50; col 3, line 63-col 4, line 2),
and a computer program operable on said computer and responsive to said audio signal output from said receiver of said broadcast source to allow said computer program to be controlled by said advertisement information (col 3, lines 35-50; col 3, line 63-col 4, line 2; col 5; lines 25-45; col 4, lines 8-11).

Tognazzini further discloses a program for accessing advertising information coupled from said receiver of said broadcast source, means for decoding advertising information encoded in said audio signal (col 3, line 65-col 4, line 2),

and means for launching said advertisement on said display of said computer (col 4, lines 5-8; col 16, lines 6-10; col 3, lines 14-18).

Tognazzini further discloses an audio signal and a coupling device (col 3, lines 39-47).

Tognazzini does not explicitly disclose control information that is sent to the user computer for controlling whether to display the advertising information.

However, Picco discloses sending the advertising information with the control information in the broadcast wherein the control information controls whether to display that advertising information:

“(13) Thus, in addition to the conventional live feeds and local content, the combiner may combine a plurality of user-specific information in the satellite signal including a private data identification code that permits the set-top box in accordance with the invention to locate the private data being transmitted through the satellite in accordance with the invention. The private data may include the compressed local content, as described above, which may be transmitted to each set-top box using several different transmission strategies, as described below. This local content may not be transmitted in real-time in that the local content is not immediately viewed by the user of the set-top box since the set-top box inserts the local content into the satellite signals as needed. As described above, the private data may also include command and control data that instructs the processor within the set-top box how to insert the local content into the satellite data streams” (col 8, lines 21-40).

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Picco further discloses that the local content can be advertisements:

“(8) For example, a user may be looking to buy a new car, and may select the preferences that are set so that the set-top box for the user stores only local content (i.e., advertisements) about automobiles. Then, when a local content space within the compressed digital data stream is identified, an automobile advertisement is shown to the user. Now, the uplink facility 102 in accordance with the invention will be described in more detail” (col 6, lines 34-41).

Picco further discloses utilizing a variety of communication methods, including broadcasting audio content:

“(2) This invention relates generally to a system and method for inserting individualized data content into a compressed digital data stream and in particular to a system and method for inserting individualized data content into a compressed digital video and audio data stream being transmitted to a plurality of viewers by any type of broadcast system, such as a satellite-based, cable-based, wireless cable (i.e., microwave) or terrestrial broadcast system” (col 1, lines 5-12).

Picco further discloses that a computer network can be utilized, the Internet and computers:

“In particular, the system may be used with a cable-based digital data broadcast system, a satellite or cable-based analog data broadcast system, a digital data broadcast system that uses a computer network, such as the Internet, a wireless cable (i.e., microwave) broadcast system, or a terrestrial broadcast system to communicate the digital data to the viewer” (col 14, lines 57-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Picco's advertiser control of advertising information sent with

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advertising information to Tognazzini's advertiser provided information. One would have been motivated to do this in order to allow the advertiser better control of advertisement display in order to more effectively reach a user.

Additionally, Tognazzini further discloses advertiser information from a broadcast being received by a computer and then being displayed (Fig. 1; Fig. 2; Fig. 7).

Harvey further discloses real time control of a computer based on broadcast transmissions including control of content or display information:

"A unified system of programming communication. The system encompasses the prior art (television, radio, broadcast hardcopy, computer communications, etc.) and new user specific mass media. Within the unified system, parallel processing computer systems, each having an input (e.g., 77) controlling a plurality of computers (e.g., 205), generate and output user information at receiver stations. Under broadcast control, local computers (73, 205), combine user information selectively into prior art communications to exhibit personalized mass media programming at video monitors (202), speakers (263), printers (221), etc (Abstract).

(10) To unlock this potential fully requires means and methods for combining and controlling receiver systems that are now separate--television and computers, radio and computers, broadcast print and computers, television and computers and broadcast print, etc (col 2, lines 5-10).

[Claim 34]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a

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broadcast signal, said method further comprising the step of controlling a selective transfer device to input to a computer control signals detected in said at least one specific channel designated by said processed datum.

[Claim 35]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a computer to respond to control signals detected in said at least one specific channel designated by said processed datum.

[Claim 36]. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a television monitor to display one of video and audio contained in said at least one specific channel designated by said processed datum.

(1359) Immediately, said European master network station causes ultimate receiver stations to obscure all video information of said master transmission and display only locally generated information and causes all national intermediate station computers, 73, and ultimate receiver station microcomputers, 205, that are combined to the transmission of said master station to commence receiving SPAM information embedded in the full frame video of said master transmission. Said master station transmits SPAM information that is addressed to URS microcomputers, 205, that causes said microcomputers, 205, to commence combining and displaying locally titles information (while

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sound is emitted of transmitted audio theme music) in the fashion described in "CONTROLLING COMPUTER-BASED COMBINED MEDIA OPERATIONS." Then said master station transmits SPAM information that is addressed to ITS computers, 73, of intermediate stations that are national stations and to URS microcomputers, 205, which SPAM information causes decoder apparatus to commence receiving SPAM information embedded in the full frame video of said master transmission at each national intermediate station and each ultimate receiver station where a microcomputer, 205, is combined to the computer system of said master transmission" (col 284, lines 30-55).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Tognazzini's display of advertisement information related to broadcasts can be displayed in real time and control information can be utilized in real time. One would have been motivated to do this in order to better utilize broadcast and computer medium for presenting of advertising or information of interest to the user.

Claim 5: Tognazzini and Picco disclose the system of claim 1, and Tognazzini further discloses that said audio output comprises:
a broadcast or recorded program including said advertisement encoded in an audio component of said program (col 3, line 65-col 4, line 2; col 1, line 19-26).

Claim 7, 13: Tognazzini and Picco disclose the system, method of claim 1, 10 and Tognazzini further discloses that said advertisement includes:
information selected from the group consisting of product identity, product description, manufacturer identity, advertising messages or program execution commands (col 4, lines 1-14).

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Claim 9: Tognazzini and Picco disclose the system of claim 8, and Tognazzini further discloses that said means for launching comprises:

Means for coupling said computer to said display (col 16, lines 6-10; col 3, lines 14-18).

Claim 11: Tognazzini and Picco disclose the method of claim 10, and Tognazzini further discloses providing an audio input interface for receiving the audio signal output from the receiver of the broadcast source,

Converting the received audio signal to a form readable by the computer,

And transmitting converted audio signal information to the computer (col 3, line 63-col 4, line 2; col 5, lines 25-35; col 6, lines 1-10).

Claim 2, 3, 4, 6, 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tognazzini (5,708,478) in view of Picco (6,029,045) in view of Harvey (5,887,243) in further view of McKiel (5,133,011).

Claim 2, 3, 12: Tognazzini and Picco discloses the system of claim 1.

Tognazzini further discloses that said audio input interface comprises:
a circuit for converting said audio signal output coupled from said receiver of said broadcast source into a form for processing by said computer (col 3, line 63-col 4, line 2; col 5, lines 25-35; col 6, lines 1-10).

Tognazzini does not explicitly disclose that the form is digital.

However, McKiel discloses converting an audio signal into digital form (col 4, lines 25-33).

McKiel further discloses an audio circuit having an input coupled to a microphone and an output (Fig. 1), and an A/D converter coupled to said output wherein an output of said A/D converter is coupled to a system bus of said computer (col 4, lines 25-33).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add McKiel's analog to digital converter to Tognazzini's computer that receives an audio signal's analyzes, processes it, and performs computer functions and analysis on it. One would have been motivated to do this because a computer can manipulate data more effectively when the data is in digital form that a computer needs to perform functions with.

Claim 4, 6, 14: Tognazzini and Picco disclose the system, method of claim 10.

Tognazzini further discloses that said audio signal output comprises:

a sound effect selected from the group consisting of superaudible tones (col 5, lines 57-61; col 10, lines 5-9).

Tognazzini does not explicitly disclose audible tones, clapping, whistling.

However, McKiel discloses that said audio signal output can be a sound effect such as audible tones, clapping, whistling, or a combination thereof (col 1, lines 20-29).

Tognazzini does not explicitly disclose an audible signal for initiating execution by said program in said computer.

However, McKiel discloses an audible signal for initiating execution by said program in said computer (col 1, lines 20-29).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add McKiel's audible signals to Tognazzini's computer that receives

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an audio signal, analyzes it, and performs computer functions. One would have been motivated to do this because an audible signal is a form of audio signal and audible signals are a form of broadcast useful in some applications or systems.

(10) Response to Argument

Examiner notes that the combination of the prior art renders obvious the features of the Appellant's independent claim 1.

In reference to independent claim 1, the combination of the prior art renders obvious:
a computer having an audio input interface and a display (Tognazzini, Figure 1, 3, 6);
an audio output acoustically coupled from a broadcast receiver of a broadcast source to said audio input interface for providing an audio signal having encoded therein advertisement information that is comprised of both advertising content and control information (Tognazzini, col 3, lines 39-47, Abstract first sentence);

a computer program operable on said computer and responsive to said audio signal output from said receiver of said broadcast source to allow said computer program to be controlled by the received control information for output of the advertising content, said program comprising:

a program for accessing the advertising information coupled from said receiver of said broadcast source (Tognazzini, col 1, line 5-57),

a decoder for decoding the received advertising information encoded in said audio signal to provide decoded advertising content and decoded control information, and

means for launching said decoded advertising content on said display of said computer under the control of said decoded control information substantially at the time of reception of the

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advertisement information (Picco, Figures 1, 3, 4, 5; Harvey, Claim 37; col 197, lines 55-60; col 179, lines 15-39).

And, the preceding is obvious in light of the rejection above.

On page 23 (and also on page 35) of the Appellant's Appeal Brief dated 8/3/2007, Appellant states:

"As Appellants stated in a previous Response, Tognazzini does not teach an "acoustical" coupling. The only signal that might be in the audio range would be that in the AM signal. However, it is not clear what portion of the audible range this signal would be in."

Examiner notes, as stated in footnote 83 on page 23 of the Appeal Brief, that in March 25, 2004 Applicant presented arguments concerning the "acoustical coupling".

Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

And, Examiner notes that in the Final Rejection dated 4/13/04, Examiner responded to the "acoustical" coupling issues with:

"Applicant's independent claims make no statement as to what frequency in the audio range is being utilized. Applicant's independent claims make no statement that the audio signal is in the audible range.

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Applicant's independent claims 1 and 10 disclose an "audio signal". And, Tognazzini discloses an audio signal and a coupling device (col 3, lines 39-47, Abstract first sentence)" (page 6 of the Office Action).

Hence, Examiner responded to the acoustical coupling arguments on 4/13/04. And, Examiner notes that there were five more Office Actions after the 4/13/04 Final Rejection. And, Examiner notes that no more acoustical coupling arguments could be found. Hence, Examiner notes that the case history indicates that the acoustical coupling arguments were long ago settled.

And, as stated in Final Rejection dated 4/13/04, Tognazzini discloses audio signal processing and a coupling device (col 3, lines 39-47; Abstract first sentence).

Also, Tognazzini further discloses processing an audio signal and a coupling device:

"A computer implemented method captures advertiser information received from an audio or video signal. The method includes the steps of receiving an incoming video or audio signal, determining whether the incoming video or audio signal includes advertisement specific data of an advertiser (Abstract)

[Claim] 1. A computer implemented method, comprising the steps of:

- (a) receiving an incoming video or audio signal;
- (b) determining whether the incoming video or audio signal includes advertisement specific data of an advertiser; ...

[Claim] 2. A computer implemented method according to claim 1, wherein said step

(b) further comprises the steps of:

- (b1) determining whether the incoming video or audio signal comprises an amplitude modulated (AM) signal, a frequency modulated (FM) signal or a television signal;

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(b2) responsive to said step (b1), performing at least one of the following steps:

(b2-1) determining whether the AM signal includes the advertisement specific data of the advertiser by analyzing embedded tones in low frequency component of the AM signal; ...

[Claim] 5. A computer system, comprising:

an input device detector and decoder processor, receiving an incoming video or audio signal, and determining whether the incoming video or audio signal includes advertisement specific data of an advertiser;

a data processor, operatively coupled to said input device detector and decoder processor, said data processor capturing and storing the advertiser specific data; ...

[Claim] 9. In a computer system including an input device detector and decoder processor receiving an incoming video or audio signal, and determining whether the incoming video or audio signal includes advertisement specific data of an advertiser, a data processor operatively coupled to said input device detector and decoder processor, said data processor capturing and storing the advertiser specific data, a printer or a display connected to said data processor, a computer implemented method, comprising the steps of:

(a) receiving the incoming video or audio signal;

(b) determining whether the incoming video or audio signal includes the advertisement specific data of the advertiser by performing at least one of the following steps. . . (Claim 9; col 12, line 65-col 13, line 12);

According to one design, the computer architecture includes an input device detector and decoder processor that receives an incoming video or audio signal, and determines whether the incoming video or audio signal includes advertisement specific data of an advertiser. The

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computer architecture also includes a data processor, operatively coupled to the input device detector and decoder processor (col 3, lines 37-47);

(26) In another embodiment, a computer implemented method is provided that captures advertiser information received from an audio or video signal. The method includes the steps of receiving an incoming video or audio signal, determining whether the incoming video or audio signal includes advertisement specific data of an advertiser, and capturing and storing the advertiser specific data (col 3, line 62-col 4, line 1);

(9) FIG. 2 is a detailed block diagram of the computer architecture for the computer system used to enable radio listeners and/or television viewers to obtain advertising information. In FIG. 2, input signals 14 are received by input device detector/decoder 16 of advertisement capture processor 6. Input device detector/decoder 16 then determines the type of the received signal, i.e., whether the signal is a radio AM signal, a radio FM signal or a television signal. After determining the specific type of the input signal, the input device detector/decoder 16 then analyzes the received signal for the advertising data embedded within the input signal.

(10) For example, if the input signal is a radio AM signal, input device detector/decoder 16 analyzes the AM signal for embedded tones in the low frequency range. On the other hand, if the input signal is a radio FM signal, input device detector/decoder 16 analyzes the input signal for supra or super audible data carriers in the FM subcarrier channel. If the input signal is a television signal, device detector/decoder 16 analyzes the input signal for the vertical retrace interval for the additional data to be utilized in advertisement capture processor 6. Of

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course, other techniques can also be used to transmit advertising data concurrently or substantially concurrently with the video and/or audio data” (col 5, lines 45-67).

Also, Examiner notes that McKiel was utilized in the rejections of 2, 3, 4, 6, 12, 14 to address the features of audio signals where a microphone is involved or specific types of audible tones.

Hence, the acoustical coupling issue was priorly settled in the case history on 4/13/04. No issues have been raised regarding acoustical coupling over five subsequent office actions until this Appeal Brief. And, Tognazzini does disclose the claimed features regarding audio signals and acoustically coupled.

Beginning on page 36, Appellant states that the combination of the prior art does not render obvious:

“advertisement information comprising both advertising content and control content such that the advertising content can be displayed at substantially the same time that the advertisement information was received”.

However, Picco discloses that live feeds, control information and local information can be combined in a real-time broadcast signal (Fig. 5 and below citation):

“FIG. 5 is a block diagram of the live feeds; local content and commands being multiplexed together in accordance with the invention” (col 4, lines 25-29).

Notice in Figure 5 of Picco that live feeds, local content, and commands are combined and sent to the user.

Picco further discloses that the content that is live feed/real-time broadcast can include advertisements (Figure 1 and below citations):

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“(3) FIG. 1 is a block diagram illustrating a conventional satellite-based television broadcast system 30 that includes a satellite head-end station 32 that includes an uplink antenna 34. The head-end station receives live television feeds (i.e., analog data streams) from various sources and combines those analog data streams into a single multiplexed analog signal. In this manner, an analog signal provided to the head-end station 32 may be sent to a plurality of households wherein each household may select a particular television channel to view. . . At the head-end station 32, the operator of the satellite-based system 30 may insert content, such as advertisements, into the satellite signal. . . this content is the same for all of the households that receive the satellite signal (col 4, line 65-col 5, lines 25).

Picco further discloses in Figure 3 that Live Feeds (106) and Added Content (108) can be combined at an Uplink facility and sent by satellite to a House (112).

And, Picco further discloses in Figure 4 combining Local Content (108) and Live Feeds (106) before they are sent (Multiplexer 140 and Combiner 142) to the user (114). Note in Figure 4 that the local content that is sent to the user is determined based on the Scheduler and the statistical information analysis:

“(9) FIG. 4 is a block diagram illustrating the uplink facility 102 (i.e., a head-end assembly) of the satellite-based television broadcast system in accordance with the invention. For reference, the satellite 104 and the set-top box 120 are also shown, but will not be described. As shown, the live television programming data feeds 106 and the local content feeds 108 are multiplexed by a multiplexer (MUX) 140 into a compressed digital data stream having a format of an MPTS. In this example, the multiplexed data stream is shown as MPTS-0, but may also be any other of the MPTS's. All of the MPTS's are then combined together

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using a combiner 142 and sent to a transmitter 144. The transmitter then uses the uplink antenna 110 to transmit the digital signal output from the combiner to the satellite 104 as is described.

(10) To generate a custom local content compressed data stream, as described above, the uplink facility 102 may include a database 146 that stores the local content. The local content database may store a plurality of pieces of local content such as a plurality of advertisements. Each piece of local content may also include the content profile as described below, a unique content identified code, a total time of the piece of local content, use statistics about the piece of local content, and utilization directives, such as an insert channel list, a view interval, a time of day the local content may be viewed, an expiration date of the local content or a maximum number of times a piece of local content may be viewed. The local content in the database 146 may be received from advertisers who wish to have the satellite operator include their local content (i.e., advertisements) in the television signal being transmitted by the satellite. To determine which local content is going to be combined with the live programming data feeds 106, the uplink facility may include a scheduler 148, an agent 150, and a statistical collector system 152. The scheduler may determine which local content is going to be combined by the combiner 140 with the live feeds based on a variety of information. For example, data about the local content being watched at a particular household 114 may be periodically communicated to the collect and decimate system 152 in the uplink facility over a communications link 154, such as a telephone line. The data from the household may include viewing time information as well as the actual television programs being viewed. The statistical collector system may collect all of the data from every household that uses the satellite-based system and then generates

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statistics about the data, such as the number of users that have viewed a particular advertisement or the number of users that viewed a particular type of advertisement. The statistics generated are fed into the agent 150. The agent 150, based on the statistics, may output the statistics or use the statistics to entice new advertisers to provide local content. The results of the agent may also be sold to outside companies, such as an advertisement agency. The agent may also be programmed to select particular local content based on the statistics. Based on the various information, the scheduler then determines the local content that is going to be transmitted by the satellite” (col 6, line 42-col 7, line 33).

Hence, Picco discloses content and advertising that are live or real-time broadcast.

Additionally, Harvey discloses that the control information is broadcast with a live/real-time broadcast content and that the control information can include control information relevant to the broadcast content:

“[Claim] 37. The method of claim 21, wherein said processor processes a datum designating at least one specific channel of one of a multichannel cable and a broadcast signal, said method further comprising the step of controlling a video recorder/player to one of record and play one of video and audio contained in said at least one specific channel designated by said processed datum.

(911) In example #10, a particular program originating studio transmits the commercial of program unit Q in a network transmission and controls a plurality of intermediate transmission stations each of which controls, in turn, a plurality of subscriber stations that are ultimate receiver stations. (col 197, lines 55-60);

(801) So far this disclosure has described an intermediate transmission station that transmits conventional television programming; however, the intermediate station automating concepts of the present invention apply to all forms of electronically transmitted programming. The station of FIG. 6 can process and transmit radio programming in the fashions of the above television programming by adding radio transmission and audio recorder/player means, each with associated radio decoder means as shown in FIG. 2B, wherever television means are shown in FIG. 6, all with similar control means to that shown in FIG. 6 and by processing radio programming with appropriately embedded signals according to the same processing and transmitting methods described above. Likewise, said station can transmit broadcast print and data communications programming by adding appropriate transmission and recorder/player means and decoder/detector means with control means and using the same processing and transmitting methods. This example has described methods at a multi-channel intermediate transmission station; the methods are also applicable in a station that transmits only a single channel of television, radio, broadcast print or data" (col 179, lines 15-39).

Also, Examiner notes that the above citations from Harvey show that the content and control information that is broadcast can be for a single channel system. Also, Harvey discloses that the content and control information that is broadcast can be for content and for control information such as recording the content that is broadcast.

Hence, the combination of the prior art renders obvious advertising and control information which are sent in conjunction with each other such that the advertising information can be displayed at substantially the same time that the control information was received or

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displaying the broadcast information at substantially the same time as the control information was received.

Hence, the combination of the prior art renders obvious advertisement information comprising both advertising content and control content such that the advertising content can be displayed at substantially the same time that the advertisement information was received.

Hence, the combination of the prior art renders obvious the features of the Appellant's claims.

On page 40 Appellant presents arguments in regards to McKiel. Examiner notes that the filing date of McKiel is Dec 26, 1990. And, that in 1990 McKiel already stated that it old and well known (from the Background of the Invention and Description of the Related Art section of McKiel) that control of computers with audible sounds was possible:

“(5) Voice control of various mechanical and/or electrical devices is well known in the art. In hand occupied environments or among the physically challenged, the accurate control of such devices is a much desired technology.

(6) Known control devices for electrical appliances range from simple power relays which apply or remove power from an appliance in response to the sound of a whistle or the clapping of hands, to sophisticated computer control devices which permit complex commands to be entered verbally. For example, telephone systems exist which automatically dial an outgoing telephone call in response to a verbal command identifying a desired individual” (col 1, lines 15-30).

Hence, the prior art rejection above utilized the further control features of McKiel that were already old and well known in 1990.

On page 42, Appellant presents arguments concerning motivation to combine the prior art references.

Examiner notes that rigid preventative rules that deny factfinders recourse to common sense are neither necessary under our case law nor consistent with it. *KSR Int'l Co. v. Teleflex, Inc.*, No 04-1350 (U.S. Apr. 30, 2007). Also, KSR forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. See the Board decision *Ex parte Smith*, -- USPQ2d --, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing KSR, 82 USPQ2d at 1396). Also, KSR states that it is obvious to recite combination which only unite old elements with no change in their respective functions and which yield predictable results. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

Also, Tognazzini, Picco, and Harvey are analogous art. Tognazzini discloses live, real-time broadcasts of content and advertising (col 1, lines 5-57). Picco further discloses live, real-time broadcasts of content and advertising (Figure 1 and the Response to Arguments above). And, Harvey discloses live, real-time broadcasts of content and advertising along with control information related to broadcast information (Response to Arguments above). Hence, the combination of the prior art presents obvious features for improving upon the delivery of live, real-time broadcasts of content and advertising with greater control over advertising.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Arthur Duran

Primary Examiner

9/25/2007

Conferees:

Eric Stamber



Vincent Millin

